



MEMORANDUM

To: PLANNING COMMISSION

Date: November 14, 2006

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: ZONING AMENDMENT, ZAA-00-14: OAK PARK – GENTILE

REQUEST

The applicant is requesting approval to amend the precise development plan for a single lot located within the El Toro Oaks Residential Planned Development (RPD). The purpose for the amendment is to allow for a second story balcony with French doors within a reduced rear yard and side yard setback.

RECOMMENDATION

Environmental Assessment: The project is categorically exempt from CEQA under Sections 15301, Existing Facilities, and 15305, Minor Alterations in Land Use Limitations.

Application, ZAA-00-14: Adopt attached resolution recommending Council denial of zoning amendment

Processing Deadline: March 25, 2007

PROJECT DESCRIPTION

The applicant is requesting approval to build a second story balcony with French doors at the rear side of his home. The home is located at 955 Oak Park Drive in the El Toro Oaks ('The Oaks') neighborhood located on the west side of DeWitt Avenue, approximately 100 ft south of W. Dunne Avenue. The home is located on a 3,280-sf lot in a R1(7,000)/RPD zoning district. As part of the original RPD, the unit was approved and constructed with reduced setbacks: 0 ft on the left (north) side, 7.5 ft on the right (south) side, and approximately 15 ft on the rear (east) side. The applicant's home is surrounded by single-family dwellings to the north, south and west, and the Morgan Hill Presbyterian Church to the east (across DeWitt Avenue).

Typically, balconies are considered allowed projections within required yards provided they do not project more than three feet and do not occupy more than 1/3 of the length of the building

wall on which they are located. A zoning amendment is required for the proposed balcony because it exceeds the provisions of an allowed projection. It is also required because the subject home is located on a reduced size lot with reduced setbacks. The area in which the balcony is proposed would encroach approximately three feet into an approximate 15-ft rear yard. The standard rear yard setback in a R1(7,000) district is 20 ft for the first story and 25 ft for the second story. The proposed balcony would also be located five feet off the north side of the home which has a zero yard setback.

BACKGROUND

In 2000, the applicant submitted a zoning amendment application requesting approval to increase the size of the second story by approximately 490 sf. The project included an addition along the front of the home and along the rear at the northeast corner of the building. The rear addition extended to the edge of the first story and included a balcony with French doors.

During the public hearings, the neighbor to the north spoke in opposition to the second story rear addition. The neighbor stated the addition would infringe upon the private use of her yard, would block solar access into her home and yard, and would create a massive building not in character with the existing neighborhood. The neighbor's home is located 11'-5" north of the subject unit, and the proposed balcony would have created sight access into the neighbor's useable yard area.

Due to the concerns presented by the neighbor, the Commission forwarded a recommendation to the City Council not to allow the second story rear addition. At the City Council meeting, the applicant offered to eliminate the balcony from the second story addition and replace the French doors with a fixed window recessed approximately two feet. By doing so, the applicant would not be able to look into the neighbor's yard. The neighbor was still opposed to the addition; however, after considerable discussion and consideration, the City Council approved the second story rear addition with the following conditions:

1. The applicant shall obtain all necessary permits for the construction of the building addition, including building permit.
2. The rear (east) second story addition shall be revised as follows:
 - a. The proposed balcony shall be eliminated and replaced with a window.
 - b. The window allowed in this zoning amendment approval shall be recessed a minimum of two feet from the eastern second story exterior wall of the house.
 - c. The height of the addition at the roof eave along the north side of the building shall not exceed 16'-11" as measured from the average ground level.

The building addition was constructed and finalized by the Building Division in 2005. However, in 2006, the applicant was red-tagged by Code Enforcement for undertaking additional remodeling work to the home without building permits. The non-permitted work included the construction of a patio structure in the rear yard and a second story balcony directly above. The applicant removed the recessed window that had been approved as part of the 2000 zoning amendment application and began construction of a balcony. The balcony sits on top of the patio structure, and projects out approximately three feet. The applicant has since obtained a building

permit for the patio structure. However, the applicant awaits resolution on the zoning amendment request before taking steps to either remove the balcony or apply for a building permit, pending the Council's decision.

CASE ANALYSIS

The Oaks homeowners' association (HOA) consists of 44 homes. Of these 44 homes/homeowners, 31 have submitted letters stating they have no objection to the proposed balcony, including the current homeowner to the north (the homeowner has changed since the 2000 zoning amendment application). The applicant had also received approval from the HOA Board for the original balcony design. However, the current balcony design extends out three feet further into the rear yard. The applicant has stated he will obtain HOA approval for the current balcony design prior to the November 14 Commission meeting.

In the applicant's Letter of Justification (attached for the Commission's reference), the applicant states the balcony *"addition would not create a situation dissimilar to many others in the R1(7,000) zoning district, in which second story openings of homes with minimum 5-ft side yard setbacks overlook into the rear yard of the adjacent home."* Also, the *"balcony addition faces DeWitt Avenue and the Morgan Hill Presbyterian Church parking lot. Due to the density of the trees surrounding our development on the west side of DeWitt Avenue, the balcony is not readily noticed or seen."* For the Commission's reference, the applicant has provided photos of the balcony structure as viewed from the rear yard and surrounding properties (see attached photos). Staff has also included a photograph which provides a closer view of the balcony construction.

In the R1(7,000) zoning district, typical two-story homes are allowed to have a second story balcony subject to the size requirements previously described. However, second stories in the R1(7,000) zone are typically set back a minimum of 12.5 ft from the side property line. The balcony proposed by the applicant would be set back approximately five feet from the side property line. Second story balconies located five feet from a side property are currently allowed in the R2 zoning districts, not the R1 districts.

It should be noted that effective December 1, 2006, the City's standards for balconies will change. The maximum overall height for a balcony within a required side and/or rear yard will be 12 ft, as measured from the base of the structure to the highest point at the top (including railing height, trellis or similar roof feature). Also, balconies more than six feet in height will be required to be set back a minimum 12.5 ft from the side and rear property line. The applicant would be able to deviate from these standards with approval of the RPD amendment.

Staff recognizes that the neighborhood HOA and surrounding residents do not object to the proposed balcony addition. However, Staff cannot support the applicant's request because it violates the specific conditions of the original RPD amendment approval. Staff also feels the balcony addition, combined with the patio structure and the recent second story addition, creates a massive structure on a small lot that is not in keeping with the surrounding homes. Finally, Staff feels the sight access into the neighbor's usable yard area on the north infringes upon the homeowner's privacy. Although the current homeowner does not object to the balcony, future owners of that unit may feel differently. For these reasons, Staff recommends the Commission

adopt the attached resolution recommending Council denial of the zoning amendment request. However, should the Commission choose to recommend approval of the request, an approval resolution is also attached. The approval resolution includes a condition that requires the applicant to secure all applicable permits for the balcony addition and any other work completed in the rear yard that does not yet have permits.

RECOMMENDATION

Staff recommends the Commission adopt the attached resolution recommending Council denial of the zoning amendment request.

Attachments:

1. Denial Resolution
2. Approval Resolution
3. Applicant's Letter of Justification
4. Photographs submitted by applicant
5. Project Location Exhibit

RESOLUTION NO. 06- (denial)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING DENIAL OF AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN FOR 955 OAK PARK DRIVE IN THE EL TORO OAKS RESIDENTIAL PLANNED DEVELOPMENT LOCATED ON THE WEST SIDE OF DEWITT AVENUE, APPROXIMATELY 100 FEET SOUTH OF W. DUNNE AVENUE (APN 773-08-043)

WHEREAS, such request was considered by the Planning Commission at their regular meeting of November 14, 2006, at which time the Planning Commission recommended denial of zoning amendment application, ZAA-00-14: Oak Park - Gentile; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

- SECTION 1.** The project is inconsistent with the Zoning Ordinance with respect to setbacks and allowed projections within required yard areas.
- SECTION 2.** The project is recommended for denial, and therefore, does not require environmental review under the California Environmental Quality Act.
- SECTION 3.** The Planning Commission recommends denial of the proposed Zoning Amendment for the following reasons:
- A. The zoning amendment is inconsistent with the conditions of approval established for the El Toro Oaks Residential Planned Development (RPD), as outlined in Council Ordinance No. 1514, N.S.;
 - B. The balcony addition, combined with the patio structure and the recent second story addition, creates a massive structure on a small lot that is not in keeping with the surrounding homes; and
 - C. Sight access into the neighbor's usable yard area on the north infringes upon the homeowner's privacy.
- SECTION 4.** For the reasons described above, the Planning Commission hereby recommends denial of Zoning Amendment application, ZAA-00-14: Oak Park - Gentile.

PASSED AND ADOPTED THIS 14TH DAY OF NOVEMBER 2006, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J. BENICH, Chair

A F F I D A V I T

We, **Alfonso & Karen Gentile**, applicants, hereby agree to accept and abide by the terms and conditions specified in this resolution.

Alfonso Gentile, Applicant

Karen Gentile, Applicant

Date: _____

Date: _____

RESOLUTION NO. 06- (approval)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN FOR 955 OAK PARK DRIVE IN THE EL TORO OAKS RESIDENTIAL PLANNED DEVELOPMENT LOCATED ON THE WEST SIDE OF DEWITT AVENUE, APPROXIMATELY 100 FEET SOUTH OF W. DUNNE AVENUE (APN 773-08-043)

WHEREAS, such request was considered by the Planning Commission at their regular meeting of November 14, 2006, at which time the Planning Commission recommended approval of zoning amendment application, ZAA-00-14: Oak Park - Gentile; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The project is consistent with the Zoning Ordinance and the General Plan with approval of the Residential Planned Development (RPD) amendment.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. The project is categorically exempt from CEQA under Section 15301, Existing Facilities, and Section 15305, Minor Alterations in Land Use Limitations.

SECTION 4. The Planning Commission finds that the proposed RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.

SECTION 5. The Planning Commission hereby recommends approval to amend the precise development plan for 955 Oak Park Drive to allow a second story balcony off the rear elevation, as illustrated in the plans date stamped September 26, 2006 on file at the Community Development Department under file ZAA-00-14: Oak Park - Gentile.

SECTION 6. The approved project shall be subject to the following conditions:

1. The applicant shall obtain all necessary permits and pay all applicable fees for the construction of the balcony addition, installation of French doors, and for any other work completed in the rear yard that does not yet have permits.
2. Plans submitted to the Building Division shall accurately identify all work proposed and/or completed in the rear yard area.

PASSED AND ADOPTED THIS 14TH DAY OF NOVEMBER 2006, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J. BENICH, Chair

A F F I D A V I T

We, **Alfonso & Karen Gentile**, applicants, hereby agree to accept and abide by the terms and conditions specified in this resolution.

Alfonso Gentile, Applicant

Karen Gentile, Applicant

Date: _____

Date: _____

TO: PLANNING COMMISSION AND CITY COUNCIL
FROM: ALFONSO & KAREN GENTILE PLANNING DEPT.
SUBJECT: RPD AMENDMENT SEP 25 2006
DATE: 9-26-06 CITY OF MORGAN HILL

WE RESPECTFULLY REQUEST TO AMEND THE RPD TO ALLOW FOR A BALCONY ADDITION WITH FRENCH DOORS TO THE SECOND STORY REAR NORTHEAST CORNER OF OUR HOME AT 955 OAK PARK DRIVE, THE PROJECTING BALCONY EXCEEDS THE PROVISION AS STATED IN ZONING CODE 18.56.060, SECTION C, BALCONIES. CANT EXCEED MORE THAN ONE-THIRD OF THE LENGTH OF THE BUILDING WALL ON WHICH THEY ARE LOCATED.

OUR PROPERTY IS 3,280 SQ. FT. AND HAS REDUCED REAR AND SIDE YARD SETBACKS. ALTHOUGH NOT DIRECTLY OVERLOOKING INTO THE NEIGHBOR'S REAR YARD, THE BALCONY DOES CREATE SIGHT ACCESS INTO THE NEIGHBOR'S USEABLE YARD AREA. HOWEVER, THIS ADDITION WOULD NOT CREATE A SITUATION DISSIMILAR TO MANY OTHERS IN THE R-1 (7,000) ZONING DISTRICT, IN WHICH SECOND STORY OPENINGS OF HOMES WITH MINIMUM 5-FT. SIDE YARD SETBACKS OVERLOOK INTO THE REAR YARD OF THE ADJACENT HOME.

ZAA-00-14: OAK PARK-
GENTILE

THE BALCONY ADDITION FACES DE WITT AVENUE AND THE MORGAN HILL PRESBYTERIAN CHURCH PARKING LOT AREA. DUE TO THE DENSITY OF TREES SURROUNDING OUR DEVELOPMENT ON THE WEST SIDE OF DE WITT AVENUE, THE BALCONY IS NOT READILY NOTICED OR SEEN. PLEASE VIEW PHOTOS, EXHIBIT "B".

IT SHOULD BE NOTED THAT THE BALCONY ADDITION HAS BEEN APPROVED BY "THE OAKS" HOMEOWNERS ASSOCIATION REVIEW BOARD. SEE EXHIBIT "A".

IT SHOULD ALSO BE NOTED THAT WE HAVE RECEIVED A ONE HUNDRED PERCENT APPROVAL FROM THIRTYTWO HOMES WITHIN THE 300' PERIMETER OF OUR RESIDENCE REGARDING THE BALCONY ADDITION. PLEASE SEE ENCLOSED APPROVAL LETTERS. EXHIBIT "C".

A SITE VISIT/INSPECTION BY THE PLANNING COMMISSION IS MOST WELCOME.

SINCERELY,

Alfonso & Karen Gentile

PLANNING DEPT. APN[#] 773-08-043

SEP 26 2006

CITY OF MORGAN HILL

APPLICANT'S RESIDENCE



VIEW LOOKING SOUTH ON DE WITT AV.

APN # 773-08-043

PLANNING DEPT.

SEP 26 2006

CITY OF MORGAN HILL



VIEW LOOKING EAST FROM APPLICANT'S
REAR YARD. MORGAN HILL PRESBYTERIAN
CHURCH PARKING AREA ADJECENT
DE WITT AVENUE.

APN # 773-08-043

PLANNING DEPT.

SEP 26 2006

CITY OF MORGAN HILL

955 OAK PARK DR.
APPLICANT'S RESIDENCE



VIEW OF BALCONY LOOKING WEST
FROM THE MORGAN HILL PRESBYTERIAN
CHURCH PARKING LOT ON DE WITT AV.

APN # 773-08-043

PLANNING DEPT.

SEP 26 2006

CITY OF MORGAN HILL

955 OAK PARK DR.

APPLICANT'S RESIDENCE



DE WITT

VIEW LOOKING WEST FROM THE

MORGAN HILL PRESBYTERIAN CHURCH

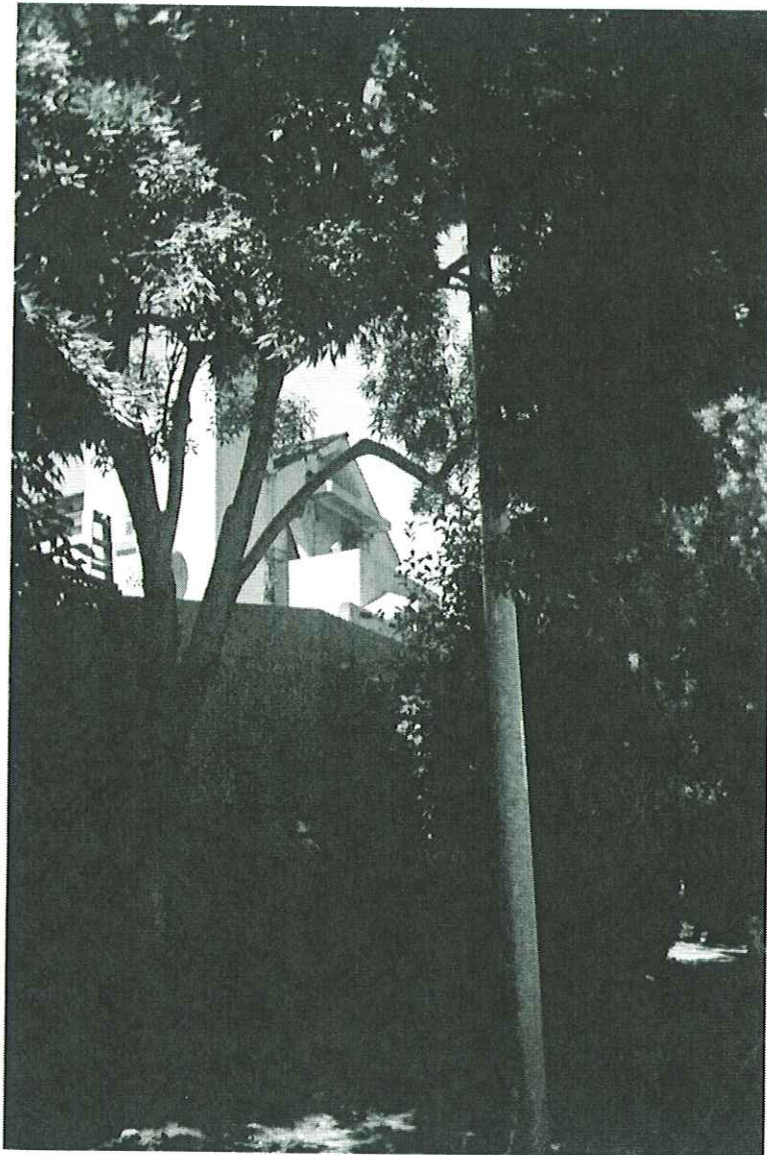
PARKING LOT ON DE WITT AVENUE.

APN 773-08-043

PLANNING

SEP. 26 2006

CITY OF MO:



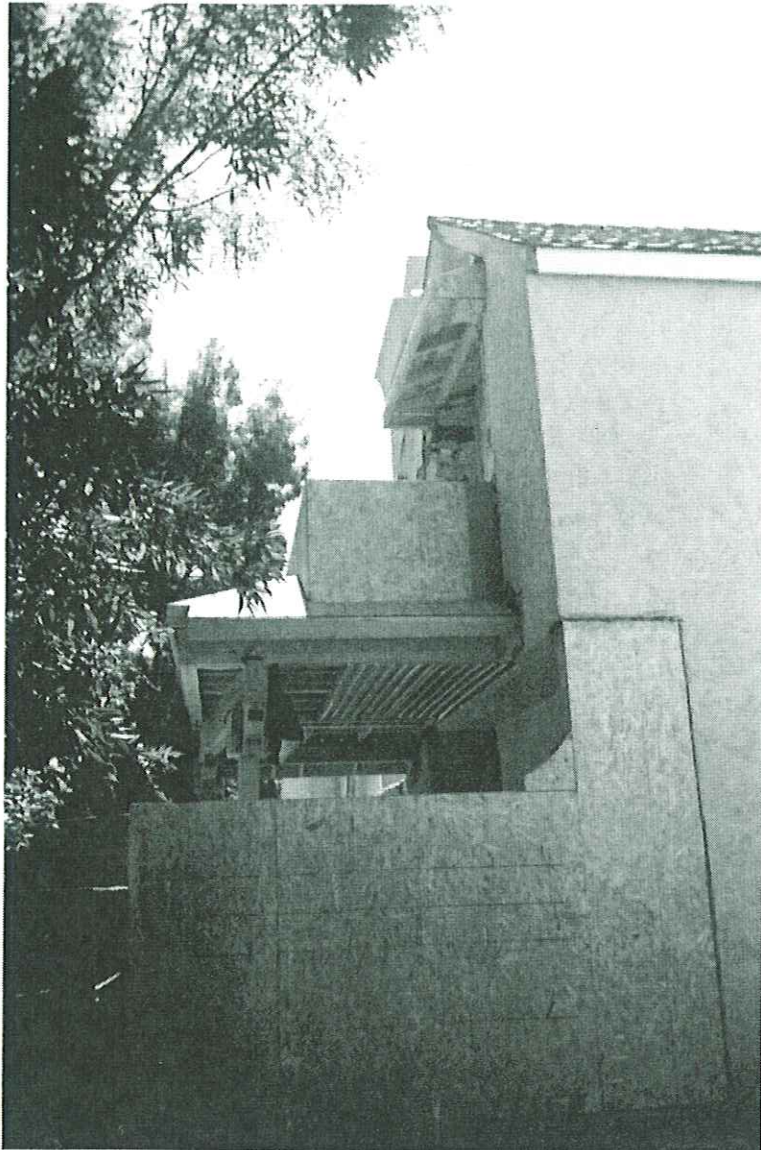
VIEW OF BALCONY FROM CENTER OF
STREET ON DEWITT LOOKING WEST
GENTILE'S RESIDENCE
955 OAK PARK DR. THE OAKS

HPN # 773-08-043

PLANNING DEPT.

SEP 26 2006

r MORGAN H



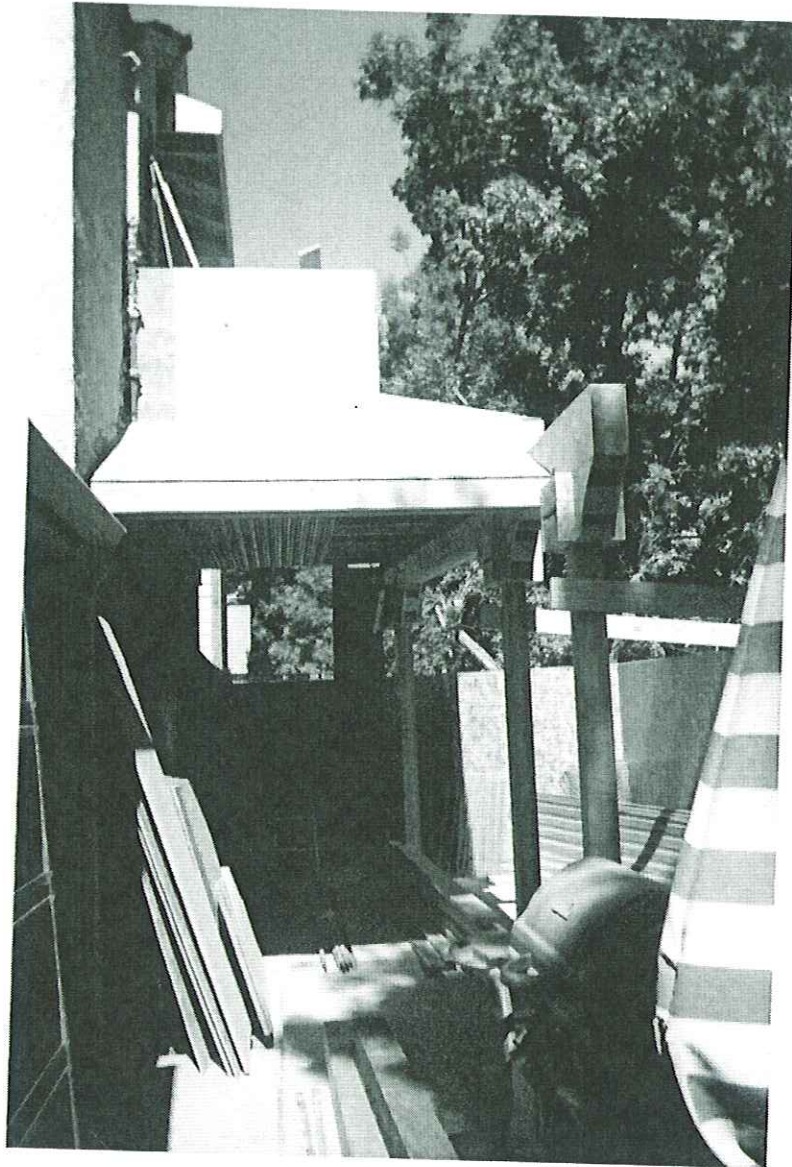
VIEW LOOKING SOUTH FROM ADJECENT
NEIGHBOR'S YARD AT 965 OAK PARK DR.
PLYWOOD SHEATHING TO BE STUCCOED

APN # 773-08-043

PLANNING DEPT

SEP 26 2006

CITY OF MONTEBELLO



VIEW LOOKING NORTH OF BALCONY
AND SPA COVER BELOW

APN # 773-08-043

PLANNING DEPT.

SEP 26 2006

CITY OF MORGAN HILL

APPLICANT'S RESIDENCE



VIEW FROM DE WITT LOOKING
WEST.

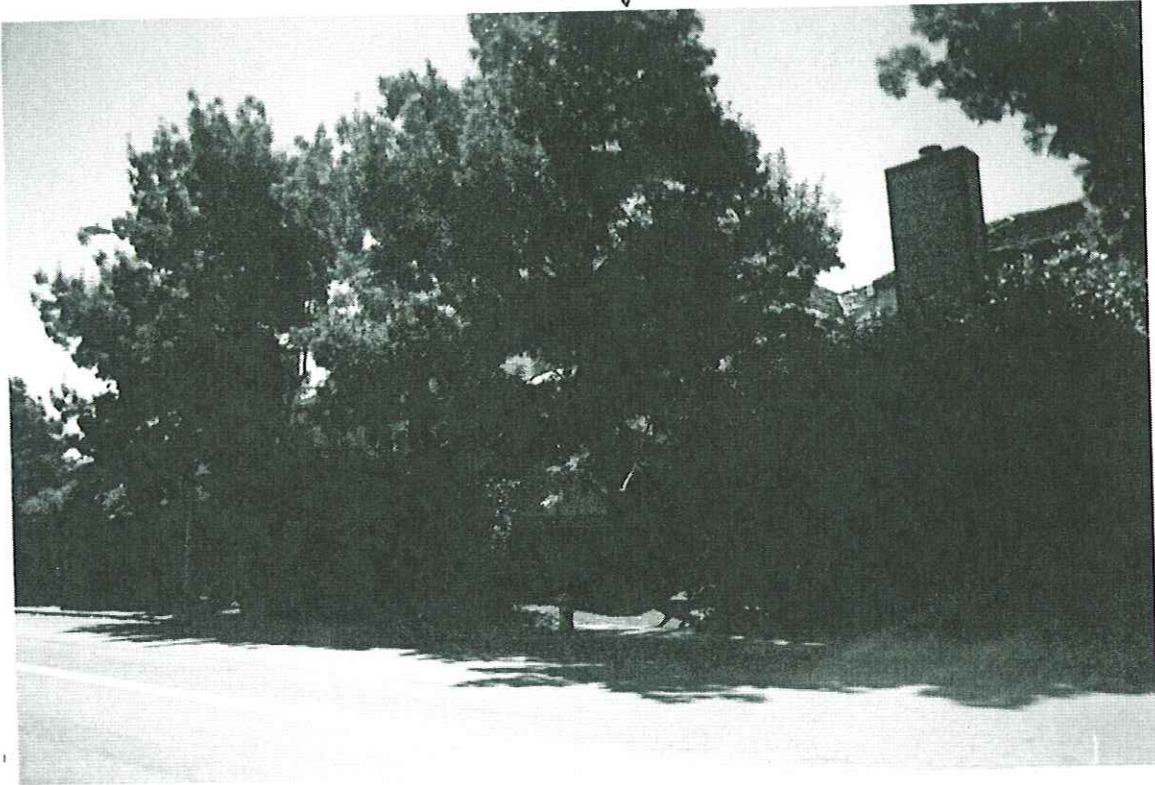
APN. # 773-08-043

PLANNING DEPT.

SEP 26 2006

CITY OF MORGAN HILL

955 OAK PARK DR.
APPLICANT'S RESIDENCE



VIEW LOOKING SOUTH FROM DE WITT AVENUE.

APN # 773-08-043

PLANNING DEPT.

SEP 26 2006

CITY OF MORGAN HILL

955 OAK PARK DR.

APPLICANT'S RESIDENCE



DE WITT



VIEW LOOKING WEST FROM THE
MORGAN HILL PRESBYTERIAN CHURCH
PARKING LOT ON DE WITT AVENUE.



TRACT NO. 7501
DE WITT

767
2



SSC 233
LAWRENCE E. STONE - ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2008-2009

 = SUBJECT SITE
 = EL TORO OAKS RPD